90-580

No.

Supreme Court, U.S.
FILED
SEP 26 1990
JOSEPH F. SPANIOL, JR.
CLERK

Supreme Court of the United States

October Term, 1990

Kondian R. Rajaram, Petitioner,

v.

International Typographical Union
(Currently known as "Printing, Publishing
& Media Workers Sector of the
Communications Workers of America");

Baltimore Typographical Union No. 12;

Sunpapers Chapel of
Baltimore Typographical Union No. 12;

Jack Jerome Poist;

Gary Kidwell; Respondents,

and

A.S. Abell Publishing Company, Defendant

Petition for Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

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Petition for Writ of Certiorari

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Tel. (301) 563-0990
Non-Lawyer and
Pro Se Petitioner

QUESTIONS PRESENTED FOR REVIEW

1. (a) Did a nationwide labor union, i.e., the defending party of a legal action, violate its members' Constitutional right of petitioning the state for redress (1) by maintaining a union by-law which openly and literally threatened its members, (who contemplated administrative charges or legal actions against their union or its subordinate jurisdictions without first exhausting union-required, years of time-consuming, and monetarily expensive, within-the-union appeal procedures), that the filing of such a charge or action against the union or its subordinate jurisdiction shall lead the filing member to summary expulsion from union membership and to consequent loss of employment under written or implied contract provisions existing--existing in

regard to expelled union members--between an employer and a subordinate jurisdiction of the union, (2) by retaining the power necessary to so expel a member and make him unemployed, and (3) by concurrently claiming that the union by-law, during 55 years (1931-1986), was meant neither to be enforced nor to be deleted from the union's law-book nor to serve as a deterrent against the filing of such a charge or action?

(b) Where a district court had personal knowledge that the threat contained in said union by-law, during said 55 years, had continuously and successfully prevented all of the estimated 80,000 union members, except the plaintiffs of two legal actions, from filing an administrative charge or a legal action against the union or its subordinates, did that district court err when it failed or refused to allow to the

union's one member, i.e., the only plaintiff of the legal action mentioned in part (a) above, a judgment that would have served as a punishment to the union, the union's subordinates, and an employer who co-operated with the union's subordinates in enforcing the union's said by-law?

2. (a) Where the agency Equal Employment Opportunity Commission-filed complaint (1) stemmed from a charge signed by a union member (not a party to the case), (2) mentioned the member by name, (3) charged the member's union for maintaining certain union by-law which, said agency alleged, (i) violated the member's Title VII of the Civil Rights Act of 1964, as amended, rights, and (ii) caused him to incur out-of-pocket monetary expenses, and (4) presented the member as the only victim (i) who caused

the filing of the complaint and (ii) to whom monetary compensation should be given by the union (A) for said by-law-caused violations of the member's said Title VII rights and (B) for the consequent out-of-pocket monetary expenses incurred by the member, did a district court err when it signed an order entering a consent agreement or decree which neither granted to the named union member the compensation requested for by the complaint, (which was never amended but was clearly indicating that said Title VII and the Labor-Management Reporting and Disclosure Act's 4-month limitations were violated by the union and its by-law), nor eliminated a conflict existing between said 4-month limitations and the union's said by-law?

(b) Did a new legal action, separate from the said agency-filed one, have to be filed for seeking the elimination of a

conflict existing between said 4-month limitations and the union's said by-law?

3. Did a district court err when it (1) denied progress to a legal action for 31 months starting from the date the action was initiated by a foreign-born, unemployed, and pro se plaintiff, (2) allowed a magistrate to consume an additional 19 months before filing his report in regard to the disposition of the entire complaint, (3) consumed a still additional 12 months before adopting the report which relied on many case laws that emerged from the nation's many different courts during the first 50 months starting from the date the action was initiated, (4) caused a resultant reversal of the direction of judgment, and (5) denied a substantial judgment to which the plaintiff was entitled were it not for the court-imposed 31-months long

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nd 19-months long denials of progress?

4. (a) Did a district court err when it, during the early stages of a first-filed federal action, (1) granted dismissal to one defending party, i.e., the only plaintiff's former employer who was a party to a subject unpublished and unenforced arbitration, without having dispositively ruled on the arbitration-related matters, said Title VII rights, and civil rights, (2) mentioned that the matters related to said arbitration, (whose official transcript's copy and contents were not available--not available until April of 1984--to the plaintiff when the first-filed federal action was initiated on January 4, 1980, and whose existence was neither mentioned nor implied by the plaintiff in any one of the 3 different versions of his complaint), were existing in the first-

filed federal action and in a companion second-filed federal action, (i.e., a class-action which (i) was originally filed in a state court in May 1984 by the plaintiff on behalf of himself and his 23 fellow employees, (ii) was seeking compensation for said 24 employees-sustained damages arising from (A) the aforesaid employer's failure or refusal to honor an award of the subject arbitration and (B) the employees' union entities' failure or refusal to enforce said award, (iii) was removed by the employer to the federal forum, and (iv) was assigned to the same district court), (3) dismissed the second-filed federal action in April 1985, and, at the last stages of the still pending first-filed federal action, (4) refused to take dispositive jurisdiction on the arbitration-related matters in regard to the then undismissed defending parties,

i.e., the plaintiff's union entities who were jointly a party to the arbitration?

(b) Where said district court had knowledge that in a then already concluded state court class-action, (i.e., a second companion action which was filed by the plaintiff on behalf of himself and his said 23 fellow employees in May 1984, was never removed, and was requesting the state court to enforce the subject award), the state court had dismissed the action in April 1986 on the claims that the arbitration-related matters (1) were then existing in the federal forum in a pending action and (2) were precluded in the state forum, did the district court err when (April 1987) it refused to take dispositive jurisdiction over the arbitration-related matters in regard to the then undismissed defending parties and the one already

dismissed defending party, i.e., the plaintiff's former employer, of the still pending first-filed federal action, (while being fully persuaded that the plaintiff, because of limitations, had no standing to file a new legal action on arbitration-related matters, not in the federal forum and not in the state forum), thus having neither the district court nor the state court to dispositively rule on the arbitration-related matters in spite of the fact that the plaintiff had filed a total of 3 lawsuits and waited for a period of time stretching from January 4, 1980 through April 16, 1987?

5. (a) Did a district court err when (April 1987) it dismissed state-law claims existing before it for trial along with undismissed federal claims just because those state-law claims were

remaining attached to said undismissed federal claims which, the district court branded, were insubstantial?

(b) Later did that district court err when (October 1989) it failed or refused to reinstate and/or remand said state-law claims, while, in some new and unrelated case laws (filed in 1989 but prior to October) of a circuit court, the same district court had been reversed and directed to consider such state-law claims on the basis of their merits?

6. (a) Where a petition for writ of error and relief from an existing judgment was timely filed, based on Rule 60, F.R.Civ.P., and a 1989 Opinion of the Highest Court, did a district court err when it denied the petition, ignored the Rule & the 1989 Opinion, and granted finality to its existing judgment?

(b) Was the act of not relying on said

1989 Opinion an error made by that district court which previously (1) denied progress to the same (then pending) case from the time of its filing on January 4, 1980 through July 27, 1982, (2) allowed a magistrate to deny progress to the case from July 27, 1982 through February 27, 1984, i.e., the date the magistrate filed his report in regard to the disposition of the entire complaint, and, (3) consequently, enabled the magistrate and his report to rely on many unrelated case laws--case laws filed by the nation's various different courts after 1980, including one 1983 opinion of a circuit court and one 1983 opinion of the Highest Court-- which were not available to rely on if a magistrate were to file his report during 1980?

(c) While enforcing the two denials of progress, discussed in Question No. 6(b) (1) & (2) above, did the district

court and/or the magistrate have an anticipation that at least some of the many unrelated cases pending during January 1980-February 1984 in the nation's various different courts will hopefully result in the filing of brand new case laws that would enable the magistrate and district court (1) to inject some matters related to a subject arbitration into the instant pending-but-progress-denied case, (2) to summarily dismiss most federal claims of the complaint, (3) to hold trial and dismiss the still open, but branded insubstantial, federal claims and the state-law claims remaining attached thereto, and, thus, (4) to direct the case towards a pre-meditated result favorable to defending parties?

7. (a) In regard to claims made on Title VII of the Civil Rights Act of 1964, as

amended, did a district court err when it relied on a 1983 opinion of a circuit court, while facts indicated that the circumstances of the case pending before the district court were not similar to the circumstances of the case that remained appealed to the circuit court?

(b) After said 1983 opinion was overruled by a 1989 Opinion of the Highest Court, did the district court err when it failed or refused to reverse its existing judgment? For what purpose does Rule 60, F.R.Civ.P., exist?

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I. REFERENCE TO THE OFFICIAL REPORTS

In The Instant Case B-80-0012:

Rule 54(b) dismissal, based on prior report and order (Appendix, 5a-28a), of defendant A.S. Abell Publishing Company ("A.S. Abell") was appealed; the United States Court of Appeals for the Fourth Circuit's ("Fourth Circuit") decision appears at Rajaram v. A.S. Abell Pub. Co., 782 F.2d 1036. Petition No. 85-1929 for certiorari was denied by this Court.

April 16, 1987 judgment (Appendix, 90a-134a) was appealed; the circuit decision is reported at Rajaram v. International Typographical Union, 852 F.2d 566. A petition filed on November 14, 1988 was denied by the instant Court.

October 11, 1989 denial (Docket Entry No. 245) was appealed; the circuit decision (Appendix, 2a-4a & 145a-146a) will appear at Rajaram v. International Typographical Union, 908 F.2d 967. The

instant petition is following.

In The Companion Federal Case B-84-2465:

Dismissal (Appendix, 135a-138a) was appealed; the circuit decision is reported at Rajaram v. International Typographical Union, 823 F.2d 548.

II. GROUNDS FOR COURT'S JURISDICTION

On June 20, 1990 the fourth circuit affirmed (Appendix, 2a-4a) on the reasoning (Appendix, 90a-132a) of the district court. Rehearing was denied on July 13, 1990.

Jurisdiction to review a circuit court's decision by writ of certiorari is conferred on this Court by 28 U.S.C. Sections 1254(1) and 1651(a).

III. CONSTITUTIONAL PROVISIONS, STATUTES, AND RULES INVOLVED

Constitutional Provisions

Amendment V:

> No person shall .... nor be deprived of life, liberty, or property, without due process of law; ....

Amendment XIV:

> .... nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Federal Statutes

28 U.S.C. Sections 1254(1), 1331, 1343, 1651(a);

29 U.S.C. Sections 185, 411, 412, 415;

42 U.S.C. Sections 1981, 1985, 1986, 1994, 2000e, 2000e-2(a) and 2(c)(2), 2000e-3(a);

42 U.S.C. Section 2000e-5(a), 5(b), 5(f)(1), 5(f)(3), 5(f)(4), 5(f)(5), 5(g), 5(j);

42 U.S.C. Section 2000e-10.

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23, 54(b), 55 [(a) & (b)], 56 [(a), (c), & (d)], 60, and 72(a).

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Title 5: Article 5-101;

Title 12: Article 12-303.

IV. A CONCISE STATEMENT OF THE CASE:

Facts, Material To Set-Up One Chronological Sequence Of The Events, To Draw For Each Question From, And To Lead To The Consideration Of The Questions Presented

The instant case, filed pro se on January 4, 1980, listed all opposing entities except A.S. Abell, because a prior EEOC-filled charge form did not contain A.S. Abell. No mention of a subject unpublished arbitration was made.

Long after 1978, petitioner

discovered that respondents' attorney Mr. Rubenstein had filed and dismissed Case N-78-455 (Baltimore Typographical Union No. 12 v. The A.S. Abell Company, N-78-455, [D.Md. 1978]) in this district, seeking enforcement of the subject award. Mr. Rubenstein never explained whether and/or how his complaint in Case N-78-455 got settled. On September 7, 1977, the arbitrator ruled that the petitioner and 23 fellow beneficiaries be allowed to continue in their job-status as long as they wanted to continue.

Assisted by Mr. Rubenstein, respondent International Typographical Union ("ITU") filed a timely answer but other respondents filed neither a timely answer nor an untimely answer nor a defense of any other type. In April 1980, 4 default orders were entered by the clerk.

Until July 26, 1982, district court

allowed no progress to the case, thus keeping the petitioner in an illusion that his pro se complaint was accepted; on July 27, 1982 the court referred the complaint to Magistrate Smalkin who discovered that the complaint should be dismissed for prolixity.

In September of 1982, petitioner found counsel who filed an Amended Complaint. On January 20, 1983 counsel filed a 16-count Second Amended Complaint and included A.S. Abell as 6th defendant. Instant petition is stemming from said Second Amended Complaint.

On October 18, 1983, the magistrate recommended (Appendix, 5a-26a) that A.S. Abell be interlocutorily dismissed; the court complied on November 6, 1983 (Appendix, 27a-28a).

During October 18, 1983-November 6, 1983, discovery papers were filed by counsel and denied by court in regard to

A.S. Abell; limited discovery from the respondents was allowed.

During 1983-early 1984, respondents provided discovery documents but not a copy of the subject arbitration's transcript, thus leading the petitioner's counsel to fail to take exceptions to the recommendation of October 18, 1983.

The complaint's all 3 versions alleged violation of petitioner's civil rights and other non-arbitration rights. All attempts to obtain a copy of the transcript failed until early 1984.

On February 27, 1984, the magistrate filed his second report (Appendix, 29a-87a) relying on many case laws then available, including DelCostello v. International Brotherhood of Teamsters, 103 S.Ct. 2281 ("DelCostello-1983") and Adams v. Proctor & Gamble Mfg. Co., 697 F.2d 582 ("Adams-1983"). He recommended that claims related to Title VII of the

Civil Rights Act of 1964, as amended, ("Title VII") and many federal claims (11 of the 16 counts) be dismissed, based mainly on Adams-1983 and DelCostello-1983. Both sides took exceptions. On February 15, 1985 the court adopted the entire report. (Appendix, 88a-89a).

In April 1984, while still checking the respondents-provided documents page-by-page, petitioner found a tip leading to National Labor Relations Board ("NLRB"); the first copy of subject arbitration's transcript was obtained during April-May of 1984.

In May 1984 petitioner filed 2 class actions on behalf of himself and 23 fellow employees who, in July 1978, were forced by A.S. Abell to resign.

In one action, petitioner sued A.S. Abell and requested a state court to confirm the subject award. In the other, he sued A.S. Abell, its officers, the

respondents & their officers, and requested the state court to allow compensation to the 24 beneficiaries for damages inflicted as a result of failure to honor & failure to enforce the award. The second action was removed in June 1984 by A.S. Abell to federal forum, numbered as B-84-2465, and assigned to this district court (Judge Black).

In B-80-0012, on the basis of the NLRB-provided copy, on October 12, 1984 petitioner's counsel filed a motion requesting to vacate the court's order which dismissed A.S. Abell from the case.

The magistrate filed third report, dated December 14, 1984, recommending that A.S. Abell be given Rule 54(b) dismissal. In spite of the exceptions, the court adopted the third report on February 13, 1985.

On February 15, 1985 that court adopted (Appendix, 88a-89a) the second

report filed on February 27, 1984. (Appendix, 29a-87a).

On March 28, 1985, in B-84-2465, the magistrate recommended that the subject arbitration-related matters were or should be an integral part of Case B-80-0012, the Cases B-84-2465 and B-80-0012 should have been consolidated, one arbitration cannot be litigated in two lawsuits, and, hence, B-84-2465 should be dismissed. (Appendix, 135a-136a). On April 4, 1985, district court dismissed B-84-2465 (Appendix, 137a-138a), no reason for not consolidating being given.

On April 23, 1986, state court dismissed the subject award-confirmation action. (Appendix, 139a-144a).

In April 1987, in the then only pending action B-80-0012, district court held a trial on the 5 undismissed counts which, it branded, were insubstantial. On April 9, 1987, petitioner's counsel

fully briefed the district court that (1) Case B-80-0012 was the only pending case to get a judgment in on arbitration matters, (2) because of limitations, petitioner will be barred from filing a new federal case or state case to assert his claims on arbitration matters, (3) no law-enforcement authority (neither federal nor state) had dispositively ruled on the arbitration matters, and (4) in B-80-0012 & B-84-2465 the magistrate had reported that the arbitration matters were an integral part of Case B-80-0012. (Appendix, 147a-152a).

On April 15, 1987, the district court pronounced that arbitration matters were not before it. (Appendix, 90a-132a, at 110a). On April 16, 1987, it dismissed the Second Amended Complaint in entirety (Appendix, 133a-134a) and the state-law claims.

On June 12, 1989 instant Court issued

an opinion in Martin v. Wilks, 109 S.Ct. 2180, contradicting with Adams-1983. On October 2, 1989, petitioner's counsel filed a petition for writ of error and relief from existing judgment dated April 16, 1987, based on Rule 60, F.R.Civ.P. and Martin. District court denied the petition but granted finality to its judgment dated April 16, 1987.

Because of many commitments, the counsel did not wish to pursue.

Notice of appeal was filed. The fourth circuit presented 6 questions to be answered and filed as pro se appeal brief. The questions permitted to present petitioner's entire ordeal. (Question No. 4:

> Do you feel that there are any other reasons why the district court's judgment was wrong? If so, what?)

Instant petition, hence, raises his ordeal in part and full. If this petition to review the fourth circuit's

decision is granted, petitioner will retain a member of the instant Bar for briefing and oral argument. Petitioner respectfully petitions that a writ of certiorari issue to the fourth circuit.

Facts Material To The Consideration Of Each Of The 7 Questions Presented

1. During 1931-1980, ITU maintained a by-law threatening its members with expulsion from union membership and all consequences existing in written or implied contracts prevailing between a subordinate of ITU and an employer-company. The by-law is quoted as:

> Sec. 43. In no case shall a member appeal to a civil court or any other agency for redress from an action by the union until he has exhausted his rights of appeal under the laws of the International Union. Any member who violates this section shall be liable to summary expulsion by the Executive Council.

The threat was attached to a member's act of appealing to an agency or

court for redress by by-passing the ITU-required appeal procedures. ITU's requirements ignored the time and money involved while exhausting the requirements. The magistrate stated that petitioner needed 15 months to exhaust the requirements. (Appendix, 58a.)

The requirements were of 6 steps, years of time-consuming, and monetarily very expensive. ITU always retained a power to summarily expel any member who, in its judgment, violated its law.

The quoted by-law was enforced in a court action in Seago et al v. Phoenix (Arizona) Typographical Union, Local No. 352 et al, No. CIV 77-979 PHX WPC (an order therein, dated the 1st day of October, 1979), leading to dismissal of the action for the plaintiffs' failure to exhaust ITU's requirements, prior to filing the action. (In August 1978, the petitioner completed the requirements.)

During 1931-1980, nearly each year ITU held convention of hundreds of delegates of its subordinates, gathering at a certain location from various parts of the United States. During the convention all changes in, additions to, and deletions from, the then effective ITU law-book were acted on. The above quoted by-law was not affected. As a result of an EEOC-filled charge form signed by petitioner on August 30, 1978, and the resultant action JH-79-1826 (EEOC v. International Typographical Union, et al, JH-79-1826 [D.Md. 1980]), the quoted by-law was modified in 1980 by an order of Judge Joseph Howard, by adding the following paragraph:

> **The preceding paragraph does not apply to the initiation of any proceedings before a Court or an agency charging a violation of Title VII of the Civil Rights Act of 1964, as amended, which prohibits employment discrimination on the basis of race, color, religion, sex and national origin.**

The amended by-law eliminated a conflict existing with the spirit of Title VII, but EEOC failed to have the conflict with Labor-Management Reporting and Disclosure Act's ("LMRDA") 4-month limitations eliminated.

Because of strict limitations before filing a case or charge, this by-law effectively and permanently prevented each of an estimated 80,000 ITU-members, except Walter Seago & his fellow-member plaintiffs of Phoenix, Arizona, and this petitioner, from suing or charging ITU or its subordinates--a claim not challenged by respondents or A.S. Abell until current date.

Respondents enforced the by-law during 1974-86 on this petitioner. A.S. Abell, i.e., petitioner's employer during August 1974-July 1978, cooperated with the respondents in enforcing said by-law in the form of written and/or implied

contracts and employer-influence.

Being directed by petitioner to the foregoing facts, the district court allowed no award to the petitioner.

2. Petitioner exhausted the ITU's requirements in August of 1978. The magistrate stated that petitioner needed 15 months. (Appendix, 58a.)

Prior to signing the EEOC-filled charge, petitioner orally explained the difficulties and problems he faced and coming from the respondents & A.S. Abell. Apparently EEOC gleaned just that much of his problems and difficulties, which EEOC wished to deal with. EEOC filled a charge and asked the petitioner to sign it or not sign it; petitioner signed it on August 30, 1978 for lack of a third choice such as putting facts in proper spaces, adding additional facts and parties, and deleting what he would not

like in the form. (He was not told that A.S. Abell was being left out; he did not have opportunity to check the form. The magistrate stated that the charge form was not properly filled if A.S. Abell and all respondents were intended to be the defending parties at EEOC. Appendix, 84a-87a.)

At the end of 1978, EEOC made a determination stating that the charge was, in part, true; it invited the parties to a conciliation. Petitioner agreed to participate. Respondents and Mr. Rubenstein refused to accept the ITU by-law as violative of any public law; conciliation attempts failed. EEOC filed an action (JH-79-1826) on September 28, 1979 against two respondents, i.e., ITU and Sunpapers Chapel of Baltimore Typographical Union No. 12 ("Sun-Chapel"). (The complaint filed therein was never amended. Petitioner was

neither a party nor summoned therein.)

The complaint mentioned the petitioner by name, allged him as a victim of ITU's said by-law, alleged that his Title VII rights were violated, stated that out-of-pocket monetary expenses were incurred by petitioner as a result of said violations, and requested monetary reimbursement from respondents to petitioner. The complaint also directed one's attention to the fact that said ITU by-law was violating the 4-month limitations mandated by LMRDA.

Judge Howard signed an order, dated June 18, 1980, which entered a consent decree presented--presented without the knowledge of your petitioner in regard to the contents and the date of filing--by EEOC and defending parties. The decree ignored the petitioner, his expenses, and the limitations mandated by LMRDA.

3. Based on an EEOC-issued right-to-sue letter dated October 25, 1979, and, during the following 40 days having failed to find an attorney who would like to represent him, on January 4, 1980, petitioner filed the instant Case JH-80-0012 pro se. The complaint stated that petitioner was an immigrant compelled in July of 1978 by A.S. Abell to resign, and typographically unemployed. The case remained assigned to Judges Jones (a few minutes), Howard, Ramsey, and Black, but no action was taken until July 27, 1982.

On July 27, 1982, the trial judge Honorable Walter Black, referred the pro se complaint to Magistrate Smalkin. The magistrate filed a report on February 27, 1984, recommending a method for the disposition of the entire Second Amended Complaint. (Appendix, 29a-87a.) The court adopted the entire report on February 15, 1985. (Appendix, 88a-89a.)

Between January 4, 1980 and February 27, 1984, many case laws emerged from the various different courts, including Adams v. Proctor & Gamble Mfg. Co., 678 F.2d 1190 ("Adams"), Adams-1983 (which was applied to summarily dismiss Title VII claims), and DelCostello-1983 (which was applied to summarily dismiss 11 of the 16 counts of the Second Amended Complaint). These case laws were used to aim the instant case towards a result favorable to the respondents and the defendant, and towards a denial of substantial judgment to the petitioner.

The undismissed counts were deemed insubstantial in terms of compensation to the petitioner. The state-law claims, (1) related to the subject unpublished and unenforced arbitration award and (2) previously admitted by the court as litigated before it, had to be attached to the undismissed federal claims.

4. On November 6, 1983 district court gave dismissal to A.S. Abell without making any dispositive ruling on the subject arbitration matter, Title VII claims, and civil rights claims. (Appendix, 5a-28a).

Being unpublished, the transcript of the arbitration was not available to the petitioner for inspection and copying, even though the petitioner attempted to obtain it from A.S. Abell, the union entities, Arbitrator Myron L. Joseph, and the library. (The court and magistrate chose to blame the petitioner for not exercising still more careful efforts to obtain that hidden document, but they did not choose to reprimand or punish the parties of the arbitration for having the document unpublished and unavailable to the 24 beneficiaries for whose sake the arbitration proceedings were held.)

In April 1984, a tip found in the

respondents-provided limited-discovery documents led the petitioner to NLRB in search of the transcript; the petitioner obtained one copy thereof in April and later of 1984. (Because of the huge volumes of the transcript, NLRB requested long period of time to copy.)

In companion case B-84-2465, the magistrate and court mentioned that the arbitration matter was or had to be or should have been or could have been a part of the instant case (Appendix, 135a-138a). On April 4, 1985, district court dismissed case B-84-2465.

At the time of the trial in April of 1987, district court had personal knowledge that in a second companion case, filed in a state court as class action and never removed, petitioner requested that court to enforce the award, and that court on April 23, 1986 dismissed the case on the grounds that

the arbitration matter was existing before a federal court and, hence, was precluded in a state court. (Appendix, 139a-144a). (Maryland's legislative mandate contained no provision for dismissing an action seeking confirmation of a final and unchallenged arbitration award.) [Maryland Rules E1 and E2. Annotated Code of Maryland, Courts and Judicial Proceedings, Title 3, Article 3-223(c)].

During the trial, district court was fully briefed that as of April 1987 no law-enforcement authority had ruled dispositively either on the award or the damages arising from not honoring the award. (Appendix, 147a-152a). Yet, that court stated that the arbitration matter was litigated in a state court, and was not before it in the instant case. (Appendix, 110a).

The result was that neither the state

court nor district court dispositively ruled on the award and the damages caused on the petitioner & his 23 fellow employees as a result of failure to honor the award and failure to enforce the award, even though petitioner had filed three separate lawsuits and waited longer than seven years (from January 4, 1980 through April 15, 1987).

5. During trial in April of 1987, district court dismissed the state-law claims related to the subject arbitration on the grounds that these claims did not have enough standing in the federal forum because the 5 undismissed federal counts remaining open for trial were worth dismissing for the reason that they were, in its judgment, insubstantial.

In the papers filed below, the petitioner presented that in Shoup v. Bell & Howell Co., 872 F.2d 1178, and in

Childers v. Chesapeake & Potomac Telephone Co., 881 F.2d 1259, the fourth circuit directed that state-law claims existing in the federal forum should be considered on the basis of their merits. (In Shoup, the court [Judge Walter Black], whose earlier judgment had been appealed, was reversed.)

6. On October 2, 1989, petitioner's counsel filed with the district court a petition for writ of error and relief from the existing judgment dated April 16, 1987, based on Rule 60 and Martin.

Martin was related to the status of a non-party's Title VII rights, where the non-party neither received summons to appear in the case nor had his day in the court. It was the understanding of the petitioner that Martin overruled and or invalidated Adams-1983.

District court did not mention that

Martin was irrelevant to petitioner's Title VII claims. District court applied finality to its existing judgment; it ignored Martin and Rule 60.

The district court, i.e., Judges Howard, Ramsey, Black and (then magistrate) Smalkin, earlier, delayed the progress of the instant case through February 27, 1984. (In his pro se appeal brief, at pages 55, 59, and 60, petitioner made specific statements that requested the involved 3 district judges and the magistrate to individually provide a letter stating his reason(s) for the delay. At the time of personally filing his pro se brief in the fourth circuit in Richmond, Virginia, petitioner concurrently mailed one copy of his brief to each of these 4 judicial authorities. None responded.) None has given a justification for applying the case laws emerging as late as middle of

1983 to the instant case which was filed on January 4, 1980.

Many case laws, including Adams-1983 and DelCostello-1983, relied on by Magistrate Smalkin, were not available to a magistrate during 1980.

These facts lead towards the direction that, if its pleasure be so, the district court would postpone the progress of a pending case even for years and wait for the filing of an opinion by a different court in a particular unrelated case; if its pleasure be to the contrary, the same district court would ignore an opinion newly filed in an unrelated case, Martin for one example.

The foregoing facts lead to one conclusion, i.e., some unrevealed, vague, & secret, information still remains with Judges Howard, Ramsey, Black, & Smalkin.

7. In his report dated February 27,

1984, in regard to Title VII claims, Magistrate Smalkin stated that the circumstances of the instant case were similar to those existing in Adams-1983. He recommended that petitioner's Title VII claims be dismissed even though petitioner was neither a party to nor summoned to appear in EEOC action JH-79-1826. (Appendix, 31a-35a). District court adopted the report in entirety (Appendix, 88a-89a), relying mainly on Adams-1983 (and DelCostello-1983).

In argument No. 7, petitioner will explain why instant case was similar neither to the facts found in Adams nor to the facts found in Adams-1983.

On June 12, 1989, the instant Court issued its opinion in Martin. Petitioner and his counsel perceived that the holding in Martin overruled the holding in Adams-1983, and, in the interests of

justice and fairness to a suffering & unemployed citizen, finality should not block the provisions existing in Rule 60 and Martin.

A petition for writ of error in and relief from district court's April 16, 1987 judgment, in regard to Title VII claims of the petitioner, was filed by petitioner's counsel on October 2, 1989. That petition was based on Rule 60, F.R.Civ.P., and Martin which established guidelines for circuit courts in regard to Title VII claims of a non-party who was neither summoned to appear in a case nor was given his day in the court.

Said petition was filed with the district court in a timely way, based on all petitioner-understandable angles of the interpretation of Rule 60, F.R.Civ.P. The district court granted finality to its April 16, 1987 judgment, but failed or refused to reverse the judgment. The

district court did not say that (1) Rule 60 and Martin were irrelevant, (2) the filing of the petition was barred, and/or (3) the filing of the petition was untimely. Hence, that court failed to attach a purpose to Rule 60's existence.

V. BASIS FOR FEDERAL JURISDICTION IN THE COURT OF FIRST INSTANCE

28 U.S.C. 1331; 28 U.S.C. 1343;
29 U.S.C. 185; 42 U.S.C. 1981;
42 U.S.C. 1985; 42 U.S.C. 1986;
42 U.S.C. 1994; 42 U.S.C. 2000e;
42 U.S.C. 2000e-2(a); 42 U.S.C. 2000e-5;
42 U.S.C. 2000e-10.

VI. ARGUMENT

1. Petitioner never challenged that a union member had to promptly exercise his civil rights in courts or agencies by ignoring his union's adverse law.

In practicable terms, however, where,

as here, ignoring the union law meant a fear of expulsion from membership and loss of employment (1) under written and/or implied provisions existing between a union entity & the employer of the member and (2) under employer-influence, ignoring the union law meant a tendency for the employer to act in favor of the union hierarchy.

Any authority existing within the United States owed to the United States a moral obligation, if not a mandatory legal obligation, of maintaining only such laws which were consistent with the laws of the United States. A labor union could not claim that its law, if found inconsistent with the laws of the United States and/or its subordinates, may be ignored; because such a claim (1) assumes that every individual can correctly and readily interpret the public laws, (2) puts on a member of the public the burden

of interpreting the laws of the United States and its subordinate jurisdictions, (which is a right vested in the several courts of the land, not in the public), and (3) fails to admit that if an individual failed to properly and promptly interpret and/or failed to notice the existence of inconsistency--like what happened during 1931-1986 to the estimated 80,000 members of ITU--the laws of the United States and its subordinates would be superseded by the union law for practicable purpose.

By observing silence to petitioner's claim that, during 1931-1986, no third lawsuit was ever filed by ITU-members against ITU or its subordinates, the respondents and A.S. Abell have admitted that the said ITU by-law prevailed and superseded public laws until 1986.

Members of ITU knew that there existed no funds--neither union funds nor

public funds--to prevent the insolvency of a union member if he became unemployed as a result of promptly exercising his civil rights by ignoring his union's law.

It is unconstitutional for a labor union to claim that its members should be prepared to become unemployed and to face insolvency as a price for challenging that union's law in a court or agency.

The fear created by the ITU by-law was endless in consuming time, and, during 1931-1980, continuously prevented about an estimated 80,000 members (except Walter Seago & his fellow members of Phoenix, Arizona, and the instant petitioner) from seeking a court or an agency. Until current date, respondents and A.S. Abell neither challenged this statement nor presented documentary evidence to disprove this statement.

It was unlawful for the respondents to keep their appeal procedures so

expensive, in terms of both monetary and time consumption, that, (so far as their membership's grievance was concerned), they enjoyed nearly litigation-free and charge-free life for 55 years.

An assessment of the motive inherent in a union by-law should be made on the basis of history rather than the claims or interpretations provided by the union's officers and attorneys.

In the courts below, respondents had pleaded that the quoted ITU by-law was never intended to be enforced, but such statements were not true in view of an order in Seago, which dismissed Walter Seago's action merely because Walter Seago et al had failed to exhaust ITU-required within-the-union grievance procedures before filing their case.

If respondents indeed did not need said by-law, as they would ask the instant Court to assume, they could have

deleted it from law-book right in 1931.

Petitioner claimed and claims that respondents used the by-law for the purpose of nullifying their members' Constitutional right to petition the state for rederss; his claim was augmented on June 18, 1980 when the consent decree of Case JH-79-1826 failed to eliminate the by-law's conflict with LMRDA's 4-month limitations.

If respondents indeed did not mean violating the laws of the United States, they could have voluntarily offered to eliminate the conflict existing between their by-law and the 4-month limitations mandated by LMRDA.

During 1931-1986, the ITU members must have failed to promptly exercise their civil rights out of said fear of expulsion and consequent possibility of unemployment, not out of unwillingness to exercise their Constitutional and/or

civil rights, because United States has been and is a land of the free people.

The facts that (1) the by-law existed in tact during 1931-1980, and violated on its face the provisions of Title VII and LMRDA, (2) prevented almost all members, during this period of time, from seeking a court or an agency, and (3) the by-law's nature of violating LMRDA survived the 1980 amendment, mean that the respondents used the by-law as a tool to escape from being sued or charged rather than to enforce the by-law or to expel a member.

It was unjust for a court to fail to punish respondents and their accomplice, and to fail to award the petitioner who brought these facts to the attention of law-enforcement authorities.

2. It was improper for EEOC to fill a charge form which it later required be

signed or not signed by a charging party.

It was unjust for a magistrate to insist that an EEOC charge form, signed by a non-lawyer, foreign-born, and pro se charging party, be perfect in every required detail and in every space assigned for individual details.

It was unjust for EEOC's consent decree to ignore the petitioner and the expenses incurred by him, while EEOC's complaint had demanded that petitioner be monetarily reimbursed for the violations of his Title VII rights and the monetary expenses incurred by him as a result of said violations. If EEOC did not mean abandoning the petitioner's interest, it could have mentioned in its decree that the charging party may proceed to assert his claims in a private action.

On its face, the EEOC-filed complaint clearly implied that ITU's by-law violated two separate pieces of

federal law, i.e., Title VII and LMRDA's 4-months limitations.

On June 18, 1980, Judge Howard knew that petitioner's pro se complaint, remaining assigned to him in JH-80-0012, contained facts indicating that petitioner was detained for longer than four months before he approached the EEOC in August of 1978. He also knew that the EEOC charge form, attached then as an exhibit, carried evidence that it was not prepared by a non-lawyer layman. He also knew that EEOC's conciliation efforts failed due to failure or refusal of respondents and their attorney Mr. Rubenstein to conciliate, whereas this petitioner had agreed to conciliate.

He knew that petitioner's Title VII rights were violated by the respondents, that petitioner had spent huge sums of money to satisfy the demands of ITU by-law before he could approach EEOC and the

court, and that EEOC's complaint requested reimbursement to petitioner. He knew that about 6 steps of internal appeal procedures were required by ITU's by-law and there was no practicable way to move through those 6 steps within a lapse of 4 months. (It took at least 15 months of time. Appendix, 58a.)

It was unjust for a district court to sign an order that entered a consent agreement or decree, prepared and filed without the only charging party's knowledge, which (1) failed to compensate that charging party, i.e., the petitioner, and (2) failed to rectify a still existing conflict with LMRDA. To be just, Judge Howard had to insist that first charging party be monetarily reimbursed in an out-of-court settlement or the case be scheduled for trial and the only charging party be summoned to appear in defense of his interests.

It was not fair for a district judge to wait for a future case to be filed, seeking the elimination of a conflict between a union by-law and the 4-month limitations mandated by LMRDA. Justice suggested that, when the judge was rectifying one type of conflict, he also should use the opportunity to rectify every other conflict with federal law.

3. Especially where the plaintiff was a foreign-born, unemployed, and pro se litigant, it was unjust for the district court, i.e., Judges Howard, Ramsey, and Black, to deny progress to the case from January 4, 1980 through July 27, 1982. During this period of time, just what these three judges were waiting for has not been revealed until the date of filing the instant petition. Rule 1, F.R.Civ.P., reads as follows:

These rules .... shall be construed to

> secure the just, speedy, and inexpensive determination of every action.

It was unjust for the district court to allow, and for the magistrate to consume, the time from July 27, 1982 through February 27, 1984 just for filing a recommendation to dispose off the case. Rule 72(a), F.R.Civ.P., reads:

> A magistrate to whom a pretrial matter not dispositive of a claim or defense of a party is referred to hear and determine shall promptly conduct such proceedings as are required and when appropriate enter into the record a written order setting forth the disposition of the matter.

It was unjust for the district court to consume time from February 27, 1984 through February 15, 1985 before adopting the magistrate's report.

It was unjust for the magistrate to file a report that relied on case laws emerging in as late as middle of 1983 to this case which was filed on January 4, 1980. It was unjust for the district

court to adopt that report. (Instead, the magistrate had to file a report shortly after July 27, 1982, relying only on those case laws which existed on and before January 4, 1980, and the court had to adopt such a report in entirety.)

It is clear that denial of judgment to petitioner had to be impossible if a magistrate had filed his report in 1980.

It was unjust for the magistrate to recommend that 11 of the 16 counts of the complaint be summarily dismissed, thus leaving only the state-law claims and the allegedly insubstantial federal claims for trial. It was unjust for the district court to adopt the magistrate's said report, thus limiting the trial to only the allegedly insubstantial claims and the court-injected state-law claims.

It was unjust for the district court to assume that petitioner attached some state-law claims to insubstantial federal

claims which that court took remaining open for trial. Petitioner attached no state-law claims to his 16-count Second Amended Complaint which included both substantial and insubstantial federal claims. (State-law claims were injected into the case on the recommendation of the magistrate's report which was adopted by the district court.)

It was unjust for the district court to consume time from January 4, 1980 through April 16, 1987, i.e., seven years, three months, and twelve days, just for the purpose of finding that the case should be dismissed. Petitioner knows of neither a statute nor a rule that would have permitted this long period of time; petitioner believes that district court had motives not yet revealed.

This belief of the petitioner is augmented by the fact (1) that

DelCostello-1983, i.e., a case originally filed several years prior to January 4, 1980, was the main case law relied on by the district court to summarily dismiss 11 (the so-called substantial) counts of the 16-count Second Amended Complaint, and (2) that Bernard Wolf Rubenstein, Esq., i.e., the counsel of respondents in almost all legal and administrative matters during 1974-1990, was the defense counsel in DelCostello v. International Brotherhood Of Teamsters, 510 F.Supp. 716, at 717 (D.Md. 1981) from the time of filing on March 16, 1978 through the date the case was decided in June of 1983 by the instant Highest Court.

The final result of Case B-80-0012 would have been entirely different and favorable to petitioner, if the case had been assigned in 1980 to a magistrate with instructions that he file his final report during 1980.

4. It was an error to dismiss A.S. Abell, without making dispositive ruling on the arbitration, Title VII claims, and civil rights, because (1) A.S. Abell was the employer functioning under both written and implied contracts whose counter-parts were the respondents, (2) A.S. Abell was closely linked with the respondents in the alleged events, and (3) most of the alleged events took place on A.S. Abell's premises.

District court knew that petitioner was a foreign-born, unemployed and non-lawyer individual. It was erroneous to blame the petitioner for not discovering an unpublished and hidden transcript until April of 1984. A proper logic would have been to suspect the parties' sincerity, because these parties had the arbitration transcript unpublished, while they had the ability to have it published. (Transcripts related to a

number of irrelevant and different matters arbitrated between A.S. Abell and the respondents were published and readily available in the law library.) The district court did not whisper a single word that none of the 3 versions of the complaint made mention of an arbitration. District court had to find that it was wrong for A.S. Abell and respondents to keep hiding a transcript from its beneficiaries.

The fact that a tip found in the respondents-provided limited-discovery documents led petitioner in April 1984 to NLRB in search of the transcript meant that, if the petitioner had not found that tip, he could not have obtained a copy of the transcript even in April-May of 1984. To keep a document hidden that tightly was wrong.

If (1) the complaint existing in Case B-84-2465 existed in Case B-80-0012 also,

and if (2) B-84-2465 should have been consolidated with B-80-0012, then (3) why was B-84-2465 dismissed, and (4) how did the complaint existing in B-84-2465 vanish during the trial held in B-80-0012? Neither the magistrate nor the district court ever gave an answer to these questions.

Was the complaint existing in B-84-2465 removed by A.S. Abell from the state forum merely for the purpose that it could not be dismissed there, whereas the federal court functioned as a suitable forum to shop for and to have the complaint easily dismissed?

In April of 1987, during the trial in B-80-0012, district court was fully briefed that the state court, on April 23, 1986, dismissed the award-enforcement case, and that in respondents-filed federal case N-78-455 the respondents themselves dismissed it without providing

explanation as to the demands of the award, how they were met, when they were met, by whom they were met, and the dates and figure and individual names involved. The court was further briefed that no law-enforcement authority, as of April 9, 1987, had dispositively ruled on any aspect of the arbitration.

Then the logic was that, in the interests of justice, the arbitration-related matters had to be dispositively ruled on in the instant and only pending Case B-80-0012. District court was aware that after B-80-0012 gets finally decided by it, petitioner would have no standing to file a new case, neither in the federal forum nor in the state forum, for reasons of limitations.

At the end of the trial, district court was aware that, as of that date, not even one aspect of the matters related to the arbitration remained

dispositively ruled by: (1) Judge Northrop in N-78-455, (2) NLRB, (3) instant district court in B-84-2465, (4) state court [Circuit Court For Baltimore City], (5) instant district court in B-80-0012, or (6) any other law-enforcement authority. On April 15, 1987, it was unjust for the district court to pronounce that:

> The Court notes here that the elimination of the TF positions was in breach of the union contract and the case was taken to arbitration by the union, but that case is not before this Court." (Appendix at 110a).

It was unjust to say that the arbitration matters were existing in B-80-0012 only during the early stages of the case, while the two companion cases needed justification for getting dismissed, but not for the purpose of dispositive ruling during the trial held in B-80-0012.

These facts boil down to only one

conclusion, i.e., the district court, state court, and defending parties of the three lawsuits, acted in collusion to have the three lawsuits dismissed, one at a time, without providing relief to the petitioner and his 23 fellow union-members on the subject arbitration.

5. If the state-law claims did not have enough standing in the federal forum, then the district court was obligated to remand them to a state court. District court gave no support for dismissing these state-law claims.

In Shoup and Childers, the fourth circuit had then freshly released a directive that state-law claims, existing in the federal forum, should be considered on the basis of their merits; Shoup was previously heard by the instant district court, and the circuit court reversed this same district court. Under

the circumstances, district court had only one correct direction to take, i.e., considering the state-law claims on the basis of their merits. It was unjust for the district court to ignore its higher authority's directive. On April 15, 1987, the district court was unjust when it pronounced that:

> "The Court notes here that the elimination of the TF positions was in breach of the union contract and the case was taken to arbitration by the union, but that case is not before this Court." [Appendix at 110a].

6. It is unchallenged that in case JH-79-1826, the petitioner was neither a party nor was summoned to appear nor was given his day in the court.

After Adams-1983 became overruled by Martin, the district court was unjust when it ignored Rule 60 and Martin. District court did not pronounce that the filing of a petition for writ of error

and relief from existing judgment was untimely. It did not say that Martin was irrelevant. It was unjust for the district court to grant finality to its judgement dated April 16, 1987.

For a district court, which was postponing the progress of the instant case for 50 months while the fourth circuit's opinion in Adams-1983 and the Highest Court's opinion in DelCostello-1983 were brewing, it was unjust to ignore the fourth circuit's opinions in Shoup & Childers and the Highest Court's directive in Martin.

In the EEOC-filed action JH-79-1826, petitioner was never a party to the action; he was never summoned to appear; he never had his day in the court. So, in light of the Martin holding, petitioner's Title VII rights, inherent in JH-79-1826, were and are not lost.

Petitioner's Title VII rights were

not at issue in Case B-84-2465 which was dismissed by the court on April 4, 1985.

On February 15, 1985, when the district court adopted in entirety the magistrate's report dated February 27, 1984, the court adopted a recommendation that petitioner's Title VII claims be dismissed based on Adams-1983.

Hence, in regard to his Title VII claims, until current date, petitioner never had his day in the court.

The district court and magistrate denied progress to the instant case from January 4, 1980 through February 27, 1984. They would have been partially justified if they had not relied on any case law that emerged during this period of time. Instead, the magistrate, in his report dated February 27, 1984, relied on a number of case laws that were filed during said period of time: Adams-1983, for one example, was filed on January 17,

1983; and DelCostello-1983, for another example, was filed on June 8, 1983. It was unjust for the district court to adopt the report; the adoption meant that it was the pleasure of the district court that the progress of this case be delayed until such time when this court can clearly foresee that this pending case can be directed towards a pre-meditated result favorable to defending parties.

District court still owes a reason for applying Adams-1983 and DelCostello-1983 but for not applying Martin.

In summary, if their pleasure be so, these district judges and magistrate would postpone the progress of a certain case for years so that they can find a suitable case law that would enable them to direct the postponed pending case towards their pre-meditated goal; after their goal is reached, if a second case law comes on their way, preventing them

from holding on to their goal, they would ignore that second case law. And that is pure injustice.

7. District court made no suggestion that the filing of a petition for writ of error was untimely or unwarranted.

The following dissimilarities existed between Adams-1983 and the instant case:

(a) In Adams-1983, charging parties were informed of the EEOC-filed case's progress until consent decree was finalized. (Adams at 1191-1192).

In JH-79-1826, consent decree was drafted, filed, and entered by court, without this petitioner's knowledge.

(b) In Adams-1983, consent decree allowed monetary awards to charging parties. (Adams at 1192 & Adams-1983 at 583).

In JH-79-1826, the complaint

requested monetary reimbursement to the only charging party, but the consent decree provided no monetary award to that only charging party.

(c) In Adams-1983, right-to-sue letters were issued after the consent decree was made and the provided awards were rejected by the charging parties. (Adams-1983 at 583).

In JH-79-1826, right-to-sue letter was issued to instant petitioner on October 25, 1979, i.e., almost 8 full months prior to the date June 18, 1980 when the consent decree was entered by the court. (In its said right-to-sue letter, EEOC stated that:

> [W]ith the issuance of this Notice of Right to Sue the Commission is terminating any further processing of this charge.

For that reason, JH-79-1826 was litigated not on behalf of this petitioner, and the consent decree made therein on June 18,

1980 did not affect this petitioner's Title VII claims).

JH-80-0012 and JH-79-1826 were concurrently pending between January 4, 1980 and June 18, 1980 before the same district judge Honorable Joseph Howard.

(d) In Adams, EEOC functioned as amicus. (Adams at 1192).

In JH-80-0012, EEOC did not function as amicus; ever from January 4, 1980 your petitioner has been litigating lonely.

(e) In Adams and Adams-1983, instant petitioner did not find hard evidence that the charged party Proctor & Gamble Mfg. Co. refused to participate in conciliation efforts prior to the making of a consent decree.

In JH-79-1826, EEOC attempted to make a conciliation agreement but failed because, even though petitioner agreed to conciliate, the respondents and Mr. Rubenstein refused to conciliate.

(f) Filing of an action by EEOC, based on a charge, was mandated to occur within 180 days from the date of the charge. (Adams at 1192).

In JH-79-1826, EEOC far exceeded the limitations mandated by the Congress; petitioner signed the EEOC-filled charge-form on August 30, 1978 but JH-79-1826 was filed on September 28, 1979.

For the foregoing reasons, Magistrate Smalkin was erroneous in recommending that the circumstances of Adams-1983 and instant case were similar on Title VII claims. And the district court erred by adopting the Title VII recommendation.

The summary holding in Adams-1983 was:

> ... The Court of Appeals, James Dickson Phillips, Circuit Judge, 678 F.2d 1190, vacated and remanded, and rehearing was sought. On rehearing, the Court of Appeals held that suits by individuals who are charging parties, who have not intervened in pending Equal Employment Opportunity Commission action in their behalf, are precluded once the EEOC action has been concluded by a consent decree.

(Adams-1983 at 582) (Emphasis added.)

(1) The facts in JH-79-1826 were: (i) that this petitioner was the only charging party, (ii) that the making and filing of a consent decree was hidden from this petitioner until one month after the decree was entered by Judge Howard, (iii) that this petitioner was never a party, (iv) that this petitioner was never summoned to appear in the case, (v) that this petitioner never had his day in the court, and (vi) that the case was litigated on behalf of the public, not on behalf of this petitioner.

> ("The EEOC represents the public interest rather than specific individuals in its litigation efforts." --Mr. James C. Lafferty, Director of Communications and Legislative Affairs, U.S. Equal Employment Opportunity Commission, Washington, D.C. 20507, August 30, 1990 [repeated August 30, 1990]).

(2) Assume, arguendo, that the October 25, 1979 right-to-sue letter did not contain the sentence quoted in

section (c) above (page 57), and that Case JH-79-1826 was indeed litigated on this petitioner's behalf.

Regardless of whether JH-79-1826 was or was not litigated on behalf of this petitioner, the above-quoted summary holding of Adams-1983 puts the fourth circuit in a head-on collision with the instant Highest Court and the United States Court of Appeals for the Eleventh Circuit:

> The District Court held that the white firefighters were precluded from challenging employment decisions taken pursuant to the decrees, even though these firefighters had not been parties to the proceedings in which the decrees were entered. We think this holding contravenes the general rule that a person cannot be deprived of his legal rights in a proceeding to which he is not a party. (Martin at 2183).
>
> All agree that it is a principle of general application in anglo-American jurisprudence that one is not bound by a judgment in personam in a litigation in which he is not designated as a party or to which he has not been made a party by service of process. (Martin at 2184).

In the court below, the respondents attempted to live on the claim that a "non-party" did not mean the same thing as "stranger". But Justice Brandeis has made it clear that any non-party, who was not a privy, who never had his day in the court, and who was not summoned to appear in a legal proceeding, should be considered a stranger.

Even the dissenting Justices of the Martin Court concluded that a non-party must be joined to a lawsuit as a party if his/her interests are to be affected by the outcome of the lawsuit:

> In this case the Court quite rightly concludes that the white firefighters who brought the second series of Title VII cases could not be deprived of their legal rights in the first series of cases because they had neither intervened nor been joined as parties. (Martin at 2188).
>
> In this case there is no dispute about the fact that the respondents are not parties to the consent decrees. It follows as a matter of course that they are not bound by those decrees.7 ...

> 7. ...: "... A court's approval of a consent decree between some of the parties therefore cannot dispose of the valid claims of nonconsenting [individuals] ... And, of course, a court may not enter a consent decree that imposes obligations on a party that did not consent to the decree." (Martin at 2190).

Therefore, in October 1989, the district court erred when it failed to reverse its judgment dated April 16, 1987 in regard to Title VII claims.

This refusal or failure of the district court is symptomatic of a fact that the district court, from January 4, 1980 through April 16, 1987, continuously maintained its mind aimed towards a similar and/or identical bent.

Summary

The foregoing facts and others existing in the records overwhelmingly establish that the district and state courts considered that judiciaries exist for the benefit of the wealthy and the

authority-holding entities of the American public.

Conclusion

For the foregoing reasons, the instant petition for writ of certiorari to the fourth circuit should be granted, the courts below should be directed to reinstate the cases in entirety & to allow relief as prayed for in the complaints, and the petitioner & his 23 fellow employees should be declared granted such further relief as deemed appropriate.

Respectfully submitted by,

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PROOF OF SERVICE

I, Kondian R. Rajaram, do hereby certify that today, , 1990, I mailed, by first-class mail certified with return receipts, postage prepaid, 3 copies of my petition and attached appendix, each one identical to any one of the 40 copies filed with the Clerk of the Supreme Court, to EACH of the following two attorneys of record, each being counsel of record for all five respondents, at his last-known address of record as recited below:

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